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Supreme Court, U.S.
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No. 05- ____

In the Supreme Court of the United States

JOHN F. TRIPLETT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit Court of Appeals' procedural bar rule, as applied, is contrary to this Court's rule that new rules for the conduct of criminal prosecutions must be applied to all cases pending on direct review, or not yet final, the holdings of all other circuit courts of appeals, the Federal Rules of Criminal Procedure and the purposes of the Sentencing Reform Act?

2. Whether the Eleventh Circuit Court of Appeals' procedural bar rule, as applied, justifies its refusal to apply the holdings of this Court's decision in *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005), and this Court's order in *Triplett v. United States*, 125 S.Ct. 994 (2005) (Mem.), granting Petitioner's petition for certiorari, vacating the prior judgment in Petitioner's case, and remanding to the Eleventh Circuit for further consideration in light of *Booker*?

3. Whether this Court should grant certiorari to resolve a split among the courts of appeals regarding how plain error pursuant to *United States v. Booker* should be treated?

PARTIES TO THE PROCEEDING

Petitioner John F. Triplett is an interested party to the proceedings herein.

Respondent is the United States of America.

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A. This Court should grant the petition to determine whether the Eleventh Circuit Court of Appeals' procedural bar rule, as applied, is contrary to this Court's rule that new rules for the conduct of criminal prosecutions must be applied to all cases pending on direct review, or not yet final, the holdings of all other circuit courts of appeals, the Federal Rules of

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B. This Court should grant the petition to determine whether the Eleventh Circuit Court of Appeals' procedural bar rule, as applied, justifies its refusal to apply the holdings of this Court's decision in *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005), and this Court's order in *Triplett v. United States*, 125 S.Ct. 994 (2005) (Mem.), granting Petitioner's petition for certiorari, vacating the prior judgment in Petitioner's case, and remanding to the Eleventh Circuit for further consideration in light of *Booker*. 19

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